UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.352
17 November 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 352nd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 November 1998, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Croatia

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.352/Add.1).

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Genève.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.98-19581 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Croatia (CAT/C/33/Add.4)

1. At the invitation of the Chairman, Mr. Židovec, Mr. Nad, Mr. Krapac, Mr. Vejić and Ms. Dragić (Croatia) took places at the Committee table.

2. The CHAIRMAN invited the delegation of Croatia to introduce the second periodic report of Croatia (CAT/C/33/Add.4).

3. Mr. ŽIDOVEC said that, since independence, the Republic of Croatia had become a party to a large number of human rights instruments and had ratified the two Optional Protocols to the International Covenant on Civil and Political Rights. Indeed, significant improvements had occurred since the consideration of the initial report, the most important being the peaceful reintegration of Eastern Slavonia into Croatia's constitutional and legal system. Also of great significance was the forthcoming signing of the Agreement on Special Relations between the Republic of Croatia and the Republic of Bosnia and Herzegovina and of the agreement pertaining to the use of the port of Ploče and the passage through Neum by those two countries.

4. Croatia, which strongly supported the international protection of human rights through the employment of objective criteria, was opposed to the use of international human rights mechanisms to gain political leverage. Any human rights violations that had occurred between the onset of the aggression against Croatia and the attainment of liberty and territorial sovereignty must be seen as a consequence of the aggression - a war marked by, among other things, executions, ethnic cleansing, genocide and ethnocide - and not as a widespread phenomenon. The consequences of war were painful in both the material and the psychological sense: confidence-building would take time and patience.

5. Croatia was going through a two-fold transition process. In June 1998, the National Plan for the Return and Accommodation of Displaced Persons and Refugees had been adopted, and 45,000 Croatian Serbs had since returned from Eastern Slavonia, Bosnia and Herzegovina and the Federal Republic of Yugoslavia. Croatia had also passed numerous laws regulating the return of refugees and displaced persons and providing legal security for returnees. As a guarantor of the Dayton Agreement, Croatia fully recognized the indivisibility and territorial integrity of Bosnia and Herzegovina, and supported all peacekeeping efforts undertaken by the United Nations in that country.

6. The Government had also established bilateral relations with the Federal Republic of Yugoslavia and was prepared to demilitarize and open the Croatian side of the border with Montenegro, currently under the administration of the United Nations Mission of Observers in Prevlaka (UNMOP), whose mandate was due to end in January 1999. The United Nations Civilian Police (UNCIVPOL) mandate in the Danubian region had also ended, after the successful completion of UNCIVPOL's task. Croatia was aware that statehood was not the only condition

for democracy, and that political and economic freedoms must also be created. As a free country, Croatia wished to enjoy and maintain the benefits of freedom regulated by law. Democracy and human rights were essential for peace, order and development and human rights policy should in fact be a component of any policy of security. It was essential to guarantee and protect human rights throughout the region, a policy which must include the arrest and punishment of war criminals.

7. Croatia, which had firmly supported the establishment of the International Criminal Tribunal for the Former Yugoslavia, was dissatisfied with the results of the Tribunal's work. Only five persons had been indicted for war crimes against the Republic of Croatia. The most notorious criminals, Karadžić, Martić, Mladić Šljivančanin, Mrkšić and Radić, were still at large. Furthermore, only three of the nine Croats who had voluntarily surrendered to the Tribunal had been indicted, despite promises of a speedy conclusion of that phase of the proceedings.

8. Croatia was a party to the Convention on the Prohibition, Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Convention), strongly supported the second protocol of the Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW) and was participating in the formulation of the draft international convention on the suppression of terrorism. A matter of great concern were the 2 million anti-personnel mines that had been laid throughout Croatia, which were delaying the return of displaced persons and hindering economic development.

9. The Government had recently ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and had accepted the jurisdiction of the European Court of Human Rights with regard to individual cases. In addition, Croatia was assisting in the drafting of an additional protocol to the Convention against Torture. It commended, moreover, the results of the conference held at Rome with a view to establishing an international criminal court which would ensure protection for human rights and the rule of law on a permanent basis. Croatia was proud to assist in the dissemination of democratic freedoms both by setting an example and by offering assistance to others.

10. Since the submission of its initial report, it had enacted a new Criminal Code which incorporated the definition of torture as set out in article 1 of the Convention, and which carried a penalty of one to eight years in prison. A new course entitled "Human Rights and Police Ethics" had been introduced into the curricula of the Police Academy. On the Committee's recommendation, all United Nations and Council of Europe documents that had a bearing on the police force - among them, the Convention against Torture - had been published and distributed to police departments and bodies.

11. Croatia had not, however, established an independent non-governmental committee to investigate allegations that acts of torture had been committed during Operation Storm. In the Government's view, the judiciary and the police had been implementing the appropriate legal measures. Croatia also

benefited from the continuing presence of bodies which were assisting in the work of the International Criminal Tribunal for the Former Yugoslavia. Although those elements should amply ensure that no crime was left unpunished, the Government was nonetheless willing to continue to discuss that matter with the Committee.

12. Lastly, the Croation Government sought the Committee's assistance and expertise in developing an even more acceptable approach to the promotion of human rights, and would do its utmost fully to cooperate in the Committee's endeavours.

13. Mr. SILVA HENRIQUES GASPAR (Country Rapporteur) said that, although it had arrived a year and a half after the scheduled date of submission, the report demonstrated the Government's willingness to cooperate with the Committee. First and foremost, he wished to commend Croatia for having ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, for accepting the jurisdiction of the European Court of Human Rights with regard to individual cases, and for ratifying the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Another praiseworthy development was the incorporation of the crime of torture in the Croatian Criminal Code.

14. The report nevertheless prompted a number of questions and concerns. Paragraph 5 indicated that an amnesty had been decreed. States admittedly possessed the right to resolve their own domestic affairs and to decide how to handle criminal matters in the aftermath of conflicts. The need for peace often demanded that some crimes should be pardoned. And yet, the Convention against Torture imposed on States parties the obligation to be cautious in designating crimes that might benefit from an amnesty. Indeed, crimes that fell under the definition of torture should never be subject to an amnesty. The report stipulated that the most aggravated crimes of human rights were excluded from the amnesty. To what specific crimes did the amnesty apply? What crimes were excluded?

15. According to paragraph 15, the new Criminal Act expressly incorporated the crime of torture. Had that new law been applied? How did it differ from previous legislation applicable to the crime of torture? Again, according to paragraph 18, the public attorney was obliged to discover the truth and to ensure respect for the law. Additional information would be welcome on the role of the public attorney and, in particular, whether he was a judge, whether he enjoyed autonomy and independence, and to what extent he was beholden to the Executive, and in particular to the Ministry of Justice.

16. Paragraphs 25 and 42 indicated that, with regard to police practice, new special mechanisms for protecting fundamental human rights had been formulated. A description of those mechanisms and procedures would be welcome. It would be useful to know, more particularly, what bodies were responsible for overseeing the conduct of the police. Paragraph 37 stated that the Ministry of the Interior was obliged to monitor police conduct on a daily basis. Was there a unit responsible for control and inspection and, if so, could it act independently and undertake investigations? Paragraph 46 stated that the authority to determine issues of detention had now been placed

under the jurisdiction of the courts. To what extent did the judge have the authority to determine whether a person would be held in preventive detention and to monitor the legality of that detention?

17. Paragraph 128 of the report said that a victim of abuse could file a complaint with a public attorney within three days. Was that three-day period obligatory? Could the victim lodge a complaint after the three days had elapsed? What was the rationale for setting such a period?

18. As to the matter of disciplinary proceedings against police officials, there was a significant discrepancy between the information provided in paragraph 41 and that which appeared in paragraphs 39, 40, 51, 52, 57 and 58: very few such proceedings had been instituted in comparison to the number of offences that had occurred. Was he interpreting those figures correctly?

19. After considering the initial report the Committee had urged the Croatian Government to investigate all allegations of torture or of cruel, degrading or inhuman treatment and to report its findings. In that regard, the State party should provide further information on the matter discussed in paragraphs 30 to 32. How many of the proceedings instituted involved such serious offences as torture and cruel, degrading or inhuman treatment?

20. Lastly, some new reports of torture or ill-treatment by Croatian police officers had been brought to the attention of the public. Could the delegation provide information concerning investigations undertaken into the cases of Saša Kalember and Riccardo Cetina?

21. Mr. ZUPANČIČ (Alternate Country Rapporteur) began by congratulating Croatia on incorporating verbatim in its criminal law the definition of torture set out in article 1 of the Convention. Another positive development had been the shortening of incommunicado detention by the police to 24 hours.

22. By and large, the report seemed to be written purely from the point of view of the Ministry of the Interior. Information appeared to be lacking on the police and on the reform of criminal law and criminal procedure. He therefore recommended that, in the future, experts from different fields should be brought together to write the report.

23. He wished to refer to a number of allegations contained in the report on Croatia by Amnesty International. Firstly, with regard to the case of Šefik Mujkić, it had been maintained that the defendant had received numerous injuries as a result of having been struck by an oblong object while hand-cuffed in a seated position. One allegation had been that he had died of trauma arising from the injuries, the other that his death had been a direct result of the injuries. The matter had gone to the Supreme Court, and the Committee would like to know what stage the case had reached.

24. The Committee was also interested to learn more about the case of Mario Barišić, a young man reported to have been severely beaten by Zagreb police in May 1998 and, as a result, hospitalized. Although the Ministry of the Interior had admitted wrongdoing and dismissed three police officers, no criminal charges were known to have been brought against them. In compliance

with article 12 of the Convention, it was the duty of the Croatian authorities to file charges, presumably under article 176 of the Penal Code, defining torture.

25. Non-governmental organizations (NGOs) had submitted a number of critical comments concerning the alleged manipulation of statistics on abuses by the army and the police. The international community's field missions operating in Croatia since 1992 had collected an enormous amount of material which could be used as evidence in criminal trials, including those relating to torture. The material had been collected by the European Community Monitoring Commission, the United Nations Protection Force, the United Nations High Commissioner for Human Rights, the United Nations Confidence Restoration Operation in Croatia, the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium and the Organization for Security and Cooperation in Europe (OSCE) Mission in Croatia. Could the delegation comment on the NGO criticism of the failure to use that material to investigate alleged perpetrators of abuse and torture? Otherwise, the Committee would have to conclude that the Government was not willing to prosecute vigorously all suspected cases of torture.

26. According to Amnesty International, reports by international organizations as well as the circumstances of the few cases that had come to court indicated serious shortcomings in the investigation carried out. Evidence had not been preserved and crime scenes had not been protected or well documented. Also, it was not clear whether autopsies had been conducted on persons when there had been a reasonable suspicion of death from unnatural causes. In prosecutions that had taken place, the Croatian authorities had dissociated themselves from any official connection with the violations, to such an extent that it seemed some soldiers had been retroactively demobilized from the army. In that context, it was especially disturbing that the President of the Supreme Court of Croatia, Milan Vuković, had made a statement to the effect that Croatians by definition could not commit war crimes, since they had been defending the homeland. Had such a statement actually been made?

27. Again, after repeated visits by soldiers in uniform, a man named Bogdan Brkić, had allegedly been tied to a tree in September 1996 and the tree had been set on fire. A human rights activist who had visited him a week later reported that he could not walk because of leg burns. Shortly thereafter, soldiers had turned up again, ransacked his home, kicked him into a nearby stream, and broken two of his ribs. Had the case been investigated, and were the alleged perpetrators, being properly prosecuted? If so, what was the current stage in the proceedings?

28. Amnesty International also reported that, in August 1998, when it had presented the authorities with its criticisms and recommendations, their immediate response had been to recycle statistics on abuse which the organization had previously exposed as meaningless. When the authorities had queried whether information existed about hundreds of killings, Amnesty International had sent details of the reported acts to the Ministry of Justice and the relevant prosecutors. Given that in some cases documentation, including police and forensic reports, seemed to have been "misplaced", the

organization had also called on the Croatian Government to investigate whether any attempt had been made to cover up the crimes committed during and after Operations Flash and Storm. Amnesty International was disappointed that, as of October 1998, it had heard nothing more from the Croatian authorities about measures they intended to take to ensure an independent, impartial and thorough investigation of all the allegations and prosecution of those responsible or about any reparation granted to victims or their relatives.

29. The reports the Committee had received from NGOs suggested a de facto impunity of certain categories of individuals suspected of committing torture. It was to be hoped that the delegation could respond to all those allegations.

30. In addition, could details be provided on the cases of the 53 individuals charged with murder and 50 others charged with other acts possibly related to torture or ill-treatment which the Croatian authorities had reported to the Security Council in June 1996? What were the names of the individuals in first instance proceedings, as well as the case number, the court, the date the proceedings had begun, the incidents being investigated and the charges being pursued? What were the names of the individuals in cases on which final decisions had been taken?

31. A number of specific legal questions also came to mind. With regard to paragraph 94 of the second periodic report, which spelt out the legally permitted periods of pre-trial detention, he noted that many countries often failed to provide information on the pre-trial, post-indictment period of detention. Whereas the pre-trial, pre-indictment period of detention could be a maximum of six months, it was often the case that the pre-trial, post-indictment period of detention pending judgment and sentencing could be as long as two years. It seemed to suggest that a total of two and a half years' pre-trial detention was conceivable. Could the delegation confirm whether that was the case?

32. Paragraph 118 contained what appeared to be the sole reference to the Constitutional Court. Had there been any cases before the Constitutional Court dealing with police brutality or abuse, as well as compensation, etc.? Paragraph 130 spoke of the right to compensation, but what type of compensation was involved? For example, if a person was found innocent after six months' pre-trial detention, how much compensation was paid?

33. Paragraph 135 said the Law on Criminal Procedure prescribed that records of hearings in which evidence had been obtained by coercion were to be excluded from the case before the hearing commenced. Did that concern the investigating judge or the trial court? Did the investigating judge see the evidence improperly obtained by the police? If so, what was done to make sure that, in that judge's own investigation, he did not make use of such evidence? Could the delegation assure the Committee that such material was discarded before the case reached the investigating judge?

34. Mr. EL MASRY said that, like Mr. Zupančič, he was pleased to note that the Criminal Code now made torture a criminal offence. But there was still an

alarming gap between the law and its application. There were many reports of acts of violence against detainees who had not been charged with criminal offences, but had been administratively punished. The Committee could provide material on many such alleged cases. He asked the delegation to comment.

35. The prosecutor in the International Criminal Tribunal for the Former Yugoslavia had said that she would not pursue prosecution in every case and that she expected national authorities to prosecute as well. What had Croatia's domestic authorities done to prosecute such cases? Notwithstanding abundant material from governmental and non-governmental observers, national prosecutors in Croatia were reported to have told Amnesty International that they possessed no information from international organizations in their files. What had the Croatian authorities done to ensure that the evidence collected by international observers was made available to prosecutors so that criminal proceedings could be brought against the alleged perpetrators of torture and ill-treatment?

36. Mr. SØRENSEN, referring first to article 10 of the Convention, asked the delegation to provide information on what training prison staff received in connection with the issue of torture. Article 10 also called for the training of medical personnel so that they could diagnose torture. Could the delegation supply information on those two groups? Such training was also of relevance to article 11, which required systematic reviews of places of detention. There again, doctors had a crucial role to play. Could the delegation inform the Committee whether prison doctors received special training in that regard?

37. One excellent safeguard against ill-treatment was the obligatory examination of detainees upon arrival in prison, because it was a good way to ascertain whether they had been tortured beforehand, namely in the police station. It was obviously to the advantage of the prison authorities to establish that a person had been the victim of torture and ill-treatment prior to committal, and not while he was in prison.

38. He drew attention to the United Nations Voluntary Fund for Victims of Torture, which stood in need of resources, and which also was of symbolic value. Victims of torture wanted to see whether their country contributed to the Fund, thereby showing them respect, the first step towards rehabilitation. Although Croatia was experiencing financial difficulties, a token donation would be welcome.

39. Lastly, he pointed out that, under the terms of article 14, victims were to receive as full rehabilitation as possible, something that included medical rehabilitation. A number of foreign-run centres in Croatia were involved in that task and he urged Croatia to support them.

40. Mr. GONZALEZ POBLETE said article 12 of the Convention established an obligation for States parties to investigate ex officio, i.e. without the victim having lodged an accusation or a complaint, whenever there were good grounds to believe that torture had been committed. The second periodic report, however, which basically referred back to the initial report, conveyed

the impression that those investigations were not carried out unless the injured party lodged an accusation or a complaint. Could more clarification be given on the legal provisions laying down the obligation to initiate investigations of that kind and what the actual practice was?

41. He endorsed Mr. Sørensen's remarks concerning article 14 and drew attention to the fact that both reports referred exclusively to the right of redress of a person who had been acquitted after having been unjustly accused or imprisoned. Neither of those situations was covered by article 14, which instead concerned the right of victims of torture to obtain redress and compensation for harm suffered. There must be some regulation in the Croatian Criminal Code on the right of any victim, not just of torture, to claim redress or compensation. In general, legislation specified that such claims were to be directed against the person responsible for the act. In the case of the right to compensation for torture inflicted by State officials, however, responsibility rested with the State.

42. Mr. YAKOVLEV said he was impressed with the Croatian report and asked the delegation to comment on allegations of discriminatory enforcement of the Criminal Code in cases of persons accused of torture. The judicial authorities allegedly took more stringent action against accused persons who had been opponents during the recent hostilities.

43. The CHAIRMAN said he assiciated himself in particular with the points made by Mr. Silva Henriques Gaspar and Mr. Sørensen on the question of amnesty. A policy of wholesale amnesty was manifestly inconsistent with the spirit of the Convention.

44. In its oral introduction, the delegation had informed the Committee that the new Criminal Code, which had come into effect in January 1998, had introduced the criminal offence of torture, defined in accordance with the terms of article 1 of the Convention. But paragraph 15 of the report stated that, although torture and other forms thereof had not been defined as explicit criminal acts, they were prohibited pursuant to the provisions of the Criminal Code. How did the delegation reconcile those two statements?

45. Again, he would like to know how judges were appointed and under what circumstances they could be removed.

46. He asked whether female offenders had separate remand facilities. How many women's prisons existed, where were they located and what was the total population of female prisoners? Were the guards in women's remand facilities and prisons female and what arrangements were made to give imprisoned mothers access to their children?

47. Perhaps the delegation would clarify the statement in paragraph 130 of the report that every person sentenced or found guilty had the right to compensation in cases of acquittal. According to the same paragraph, not a single request for compensation regarding criminal acts against human and civil freedoms and rights had been recorded in 1996 and the first half

of 1997. Did certain obstacles have to be cleared before a person could apply for compensation? It seemed irrational that eligible persons would fail to apply. Moreover, did Croatia have a system of legal aid and, if so, what form did it take?

48. He invited the delegation of Croatia to respond to the Committee's questions at the next meeting.

49. The delegation of Croatia withdrew.

The public part of the meeting rose at 11.20 a.m.